



March 7, 2001

Mr. Timothy K. Irvine
General Counsel
Texas Savings and Loan Department
2601 North Lamar, Suite 201
Austin, Texas 78705

OR2001-0895

Dear Mr. Irvine:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144870.

The Texas Savings and Loan Department (the "department") received a request for information relating to two mortgage broker licensees, James and Donna McBride (the "McBrides"), and an unlicensed company. You indicate that you have released the applications of these individuals with the social security numbers and home addressees redacted, and that you have withheld third party letters verifying the experience of these applicants. You claim that portions of the responsive information are excepted from disclosure under sections 552.101 and 552.110 of the Government Code.

You suggest that the property rights of third parties may be implicated by the release of a portion of the requested information. You state that the department notified the McBrides, the individuals whose information is responsive to the request, of the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). Section 552.305(d) of the Act requires a governmental body to make a good faith effort to notify a party whose proprietary interest may be implicated by the release of the requested information. The third party notice must be sent within ten days of the governmental body's receipt of the request and must include a copy of the written request for information and a statement in the form prescribed by the

attorney general.¹ The notice informs the third party that it may submit to the attorney general, within ten days of receiving the notice, its reasons why the information in question should be withheld. The McBrides did not provide comment to this office.

We first note that, although you indicate that the department attached the request for information to correspondence to this office, there was no such attachment. The Public Information Act requires a governmental body that wishes to withhold requested information to provide to this office a copy of the request for information not later than the fifteenth business day after the date of receiving the requestor's written request. Gov't Code § 552.301(e)(1)(B). By failing to provide the written request, the department failed to comply with section 552.301 of the Government Code. If the governmental body does not comply with the requirements of section 552.301, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. Such a compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). As the exceptions you raise protect confidential information and the interests of third parties, those exceptions shall be addressed.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception applies to information made confidential by the common law right to privacy. *Industrial Foud. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *Id.* Financial information concerning an individual is generally protected by a common law right of privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). A previous opinion of this office states that "all financial information relating to an individual . . . ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." Open Records Decision No. 373 at 3 (1983).

The department relates that financial statements responsive to the request were provided to the department as required by the Mortgage Broker License Act. This act is codified at chapter 156 of the Finance Code. Section 156.205 of this code imposes certain financial requirements for issuance of mortgage broker licenses. Subsection 156.205(c) requires proof that an applicant meets the requirements of this section. You contend that the interest of the public in information required by this act is satisfied by the department's confirmation that

¹The form can be found in Appendix C of the 2000 Texas Public Information Handbook. The handbook is available online at the Office of the Attorney General's web site at www.oag.state.tx.us.

an applicant meets the requirements of licensure. The department notes that issuance of the subject license is such confirmation. From our review of the submitted financial statements we conclude that they are personal financial information and that the issuance of a license, or other confirmation by the department that an applicant has met the statutory requirements for such a license, satisfies the legitimate public interest in this information. Therefore, the responsive financial statements are protected by the common law right of privacy and must be withheld under section 552.101 of the Government Code.

Note that neither home addresses nor social security numbers are protected by the common law right of privacy. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any social security numbers in the responsive records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law enacted on or after October 1, 1990.

You contend that letters supplied by third parties to verify the experience of license applicants are protected by section 552.110 of the Government Code. A governmental body, or interested third party, raising this exception must provide a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from disclosure of the information. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Neither the department nor any interested party has provided any such factual allegations. Therefore, the submitted letters may not be withheld under section 552.110 of the Government Code and must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

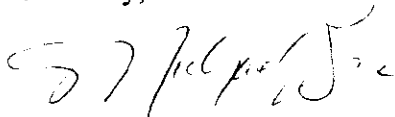
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Jay Burns". The signature is stylized with a large initial "M" and a long, sweeping underline.

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 144870

Encl: Submitted documents

cc: Mr. Richard Tomlinson
c/o Timothy K. Irvine
General Counsel
Texas Savings and Loan Department
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(w/o enclosures)